

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5/7/2006

C O R A M

THE HONOURABLE Mr.JUSTICE ELIPE DHARMA RAO
a n d
THE HONOURABLE Ms.JUSTICE K.SUGUNA

Writ Petition Nos.
5525, 6046, 6503 and 6504 of 2000

1. The Union of India
rep. by
The Chief Secretary to Government
Chief Secretariat Buildings
Pondicherry.
2. The Deputy Secretary to Government
Department of Personnel and
Administrative Reforms
Chief Secretariat Buildings
Pondicherry. Petitioners

1. The Central Administrative Tribunal
Madras Bench
through its Registrar.
2. P.R.Magimainathan Vincent
L.D.C. Chief Secretariat
Pondicherry.

3. D.Coumarane @ Pragche

4. S. Suresh Pilomine

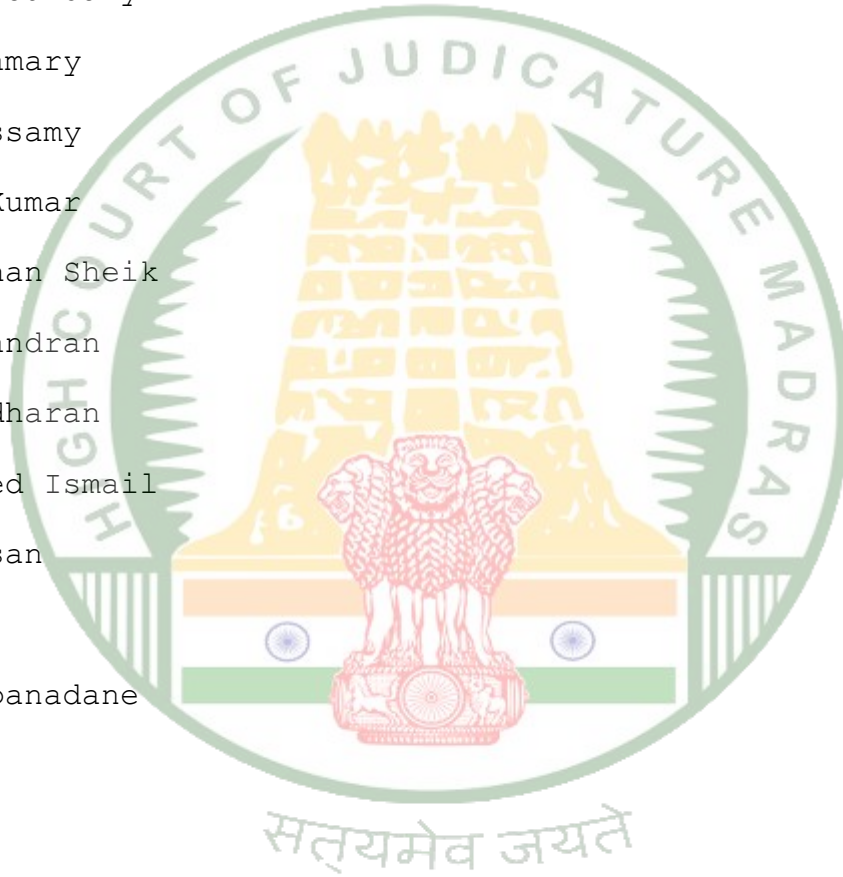
5. S. Mathiazhagan

6. L. Thirumourougane

7. K. Chandrasekran

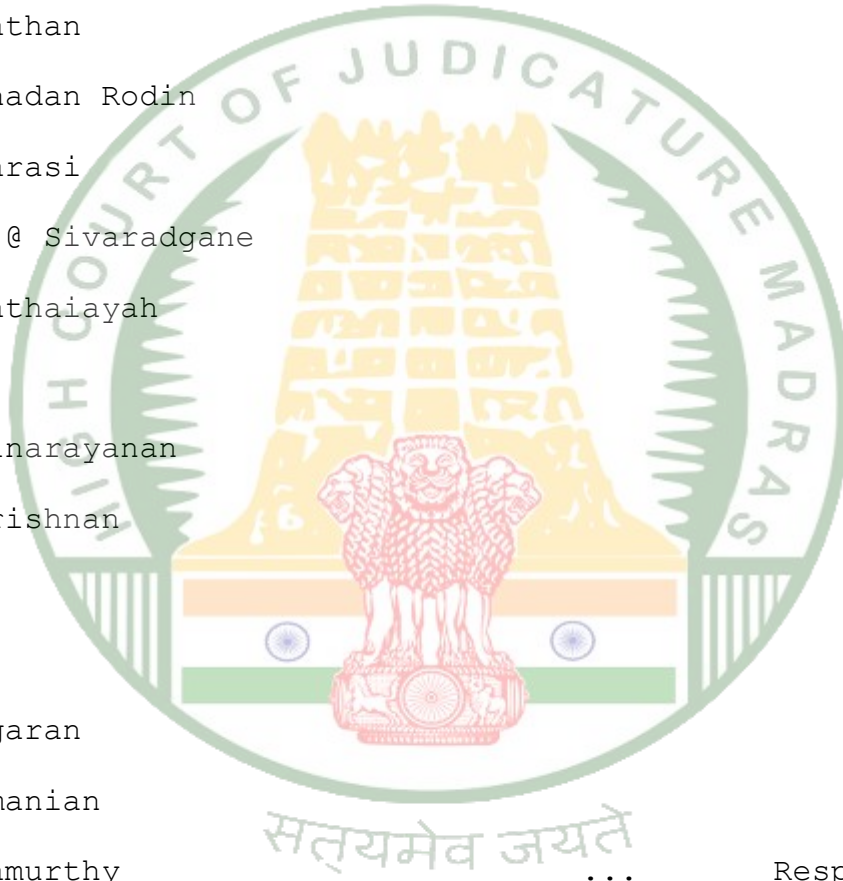
8. P. Sumitra

9. R. Pushpanathan
10. R. Venkatakrishnan
11. S. Baskaran
12. G. Ravindran
13. V. Ravisankar.
14. N. Ballassoundary
15. A. Punithamary
16. R. Mounnissamy
17. A.K.Ajay Kumar
18. S. Chadjahan Sheik
19. S. Ravichandran
20. V. Muralidharan
21. A. Mohammed Ismail
22. S. Murugesan
23. M.V.Hiran
24. S. Pouchepanadane
25. P.K.Sujan
26. P. Reddy
27. N. Udaykumar
28. J. Murali
29. P. Devarajan
30. E.N.Anil Govind
31. G. Savoundirarajan
32. Satish



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33. J. Devidasan
34. M. Raja
35. K. Arunagirinathan
36. N. Viswanathan
37. A. Narendiran
38. S.Muralidharan
39. G. Jegannathan
40. Mourougannadan Rodin
41. V. Calaiyarasi
42. K.Candane @ Sivaradgane
43. S. Yesvanathaiayah
44. Vincent
45. V. Lakshminarayanan
46. S. Radhakrishnan
47. Soundary
48. A. Ravi
49. M. Danasegaran
50. M. Soubramanian
51. E.Dakshinamurthy



... Respondents.

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records pertaining to the order passed in O.A.No.180/97 dated 29/12/1999 on the file of Central Administrative Tribunal, Madras and to quash and dismiss the same.

For petitioners ... Mr.K.K.Shasheedharan
for Mr.T.Murugesan
GP (Pondicherry).

For respondents

... Mr.D.Bharatha Chakravarthy
for R.R.2 to 7.
Mr.U.Karunakaran
for M/s.G.M.Associates
for R.10-13,17-21,24,26,28,
29,31,32,34-42,44-50.

W.P.No.6046 of 2000

1. The Union of India
rep. by
The Chief Secretary to Government
Chief Secretariat Buildings
Pondicherry.

2. The Deputy Secretary to Government
Department of Personnel and
Administrative Reforms
Chief Secretariat Buildings
Pondicherry.

... Petitioners

Vs

1. The Central Administrative Tribunal
Madras Bench
through its Registrar.

2. V. Padmanabhan

3. P. Sumitra

4. R. Pushpanathan

5. R. Venkatakrishnan

6. S. Baskaran

7. C. Ravindrane

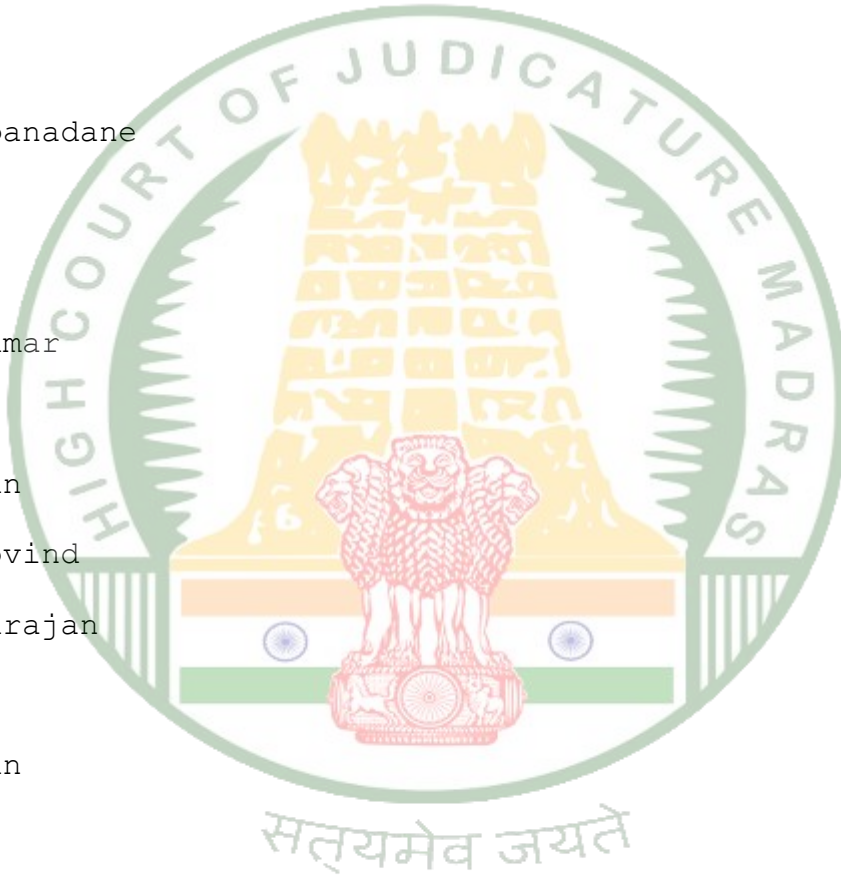
8. V. Ravishankar

9. N. Balassoundary

10. A. Punithamary

11. R. Mounnissamy

12. A.K.Ajaykumar
13. S. Chandran Sheik
14. S. Ravichandran
15. V. Muralidharan
16. Mohammed Ismail
17. S.Murugesan
18. M.V.Hiran
19. S. Pouchepanadane
20. P.K.Sujan
21. P.Radhy
22. N. Udayakumar
23. J.Murali
24. P.Devarajan
25. E.N.Anilgovind
26. G.Soundirarajan
27. S.Satish
28. J.Devidasan
29. M.Raja
30. K.Arunagirinathan
31. N.Viswanathan
32. A.Narendiran
33. S.Muralidharan
34. G.Jagannathan
35. Mourouganandam Redin



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36. V.Calaiyarasi
37. K.Candane @ Sivarajdane
38. S.Yesvanathanian
39. Vincent
40. V.Lakshminarayanan
41. S.Radhakrishnan
42. M.Mohana Soundary
43. A.Ravi
44. M.Dhanasekaran
45. M.Soubramanian
46. E.Dakshinamurthy ... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records pertaining to the order passed in O.A.No.715/97 dated 29/12/1999 on the file of Central Administrative Tribunal, Madras and to quash and dismiss the same.

For petitioners ... Mr.K.K.Shasheedharan
for Mr.T.Murugesan
Govt. Pleader (Pondicherry)

For respondents ... Mr.U.Karunakaran
for M/s.G.M.Associates
for R.R.5-8, 12-16,19,
21,23,24,26,27,29-37,
39,40-45.

W.P.No.6503 of 2000

1. P.K.Sujan
2. P.Radjy
3. J. Murali
4. P.Devarajan

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5. G.Savoundirarajan
6. S.Satish
7. M.Raja
8. K.Arunagirinathan
9. A.Narendiran
10. S.Muralidharan
11. G.Jagannathan
12. K.Candane @ Sivaradjane
13. M.Mohana Soundary
14. A.Ravi
15. M.Danasegaran
16. M.Soubramanian
17. V.Lakshminarayanan

Petitioners

Vs

1. The Union of India
rep. by
The Chief Secretary to Government
Chief Secretariat Buildings
Pondicherry.
2. The Deputy Secretary to Government
Department of Personnel and
Administrative Reforms
Chief Secretariat Buildings
Pondicherry.
3. The Registrar
Central Administrative Tribunal
High Court Buildings
Chennai 600 104.

4. P.R.Magimainathan Vincent
5. D.Coumarane @ Pragache
6. P.Suresh Philomin
7. L.Thirumugane
8. K.Chandrasekaran
9. P.Sumitra
10. R.Pushpanathan ... Respondents.

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records pertaining to the common order dated 29/12/1999 passed in O.A.Nos.180/97, 425/98 and 715/97 by the third respondent on the file of Central Administrative Tribunal, Madras and to quash the same.

For petitioners ... Mr.V.Karunakaran
for M/s.G.M.Mani Associates

For respondents ... Mr.K.K.Shashidharan, GP
for R.R.1 and 2.
Mr.S.K.Raghunathan for R.4

W.P.No.6504 of 2000

1. P.K.Sujan
2. P.Radjy
3. J. Murali
4. P.Devarajan
5. G.Savoundirarajan
6. S.Satish
7. M.Raja
8. K.Arunagirinathan

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9. A.Narendiran
10. S.Muralidharan
11. G.Jagannathan
12. K.Candane @ Sivaradjane
13. M.Mohana Soundary
14. A.Ravi
15. M.Danasegaran
16. M.Soubramanian
17. V.Lakshminarayanan ... Petitioners

Vs

1. The Union of India
rep. by
The Chief Secretary to Government
Chief Secretariat Buildings
Pondicherry.
2. The Deputy Secretary to Government
Department of Personnel and
Administrative Reforms
Chief Secretariat Buildings
Pondicherry.
3. The Registrar
Central Administrative Tribunal
High Court Buildings
Chennai 600 104.
4. V.Padmanabhan ... Respondents.

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records pertaining to the common order dated 29/12/1999 passed in O.A.Nos.180/97, 425/98 and 715/97 by the third respondent on the file of Central Administrative Tribunal, Madras and to quash the same.

For petitioners ... Mr.V.Karunakaran
for M/s.G.M.Mani Associates

For respondents ... Mr.K.K.Shashidharan, GP
for R.R.1 and 2.

Mr.S.K.Raghunathan for R.4

C O M M O N O R D E R

(Order of the Court was made by
Mr.Justice ELIPE DHARMA RAO).

This common order shall dispose of the above mentioned four writ petitions as the issue involved in all the writ petitions is one and the same and common arguments were advanced in all the writ petitions.

2. While W.P. Nos.5525 and 6046 of 2000 were filed by the Government of Pondicherry, challenging the order dated 29-12-1999 passed by the Central Administrative Tribunal (in short 'the Tribunal) in O.A. Nos.180 and 715 of 1997, W.P. Nos.6503 and 6504 of 2000 were filed by the aggrieved original applicants challenging the order dated 29-12-1999 passed by the Tribunal in O.A. Nos.180 and 715 of 1997.

3. Facts, in brief, are: In the year 1994, the Government of Pondicherry had notified 23 vacancies (21 regular vacancies and 2 vacancies reserved for ex-servicemen) in the cadre of Upper Division Clerk (in short UDC) for being filled up by direct recruitment through a competitive examination. According to the relevant Recruitment Rules, the method of recruitment to the post of UDC is 80% by promotion and 20% by direct recruitment through competitive examination from among the candidates possessing a degree of a recognised University and from among the Lower Division Clerks (LDCs) with three years of continuous service. Accordingly, the Government on 29-4-1994 addressed the Employment Exchange as well as the Rajya Sainik Board to furnish the list of eligible candidates and eligible ex-servicemen. On the very same day, the Government also issued an I.D. Note/Memorandum to all the Secretariat Departments informing the conduct of competitive examination for direct recruitment to the post of UDCs and called for applications, through proper channel, from the eligible LDCs to appear for the competitive examination along with the employment exchange/Rajya Sainik Board sponsored candidates. The competitive examination was held on 11-8-1996 and the results were announced on 15-11-1996. The Government, by order dated 15-11-1996, prepared a select-list of successful candidates for 44 vacancies. Challenging the select-list prepared by the Government for 44 vacancies, some LDCs working in the various departments of the Pondicherry Government have filed original applications (O.A. Nos.180 of 1997 and 425 of 1998). An unsuccessful candidate sponsored by the employment exchange has also filed an original application (O.A. No.715 of 1997) challenging

the select list drawn by the Government of Pondicherry for 44 vacancies. The original applicants have also challenged the conditions contained in the notification relating to LDCs with three years of continuous service and in case of ex-servicemen with 15 years of defence service are eligible to appear for the competitive examination as illegal and against the recruitment rules. The Tribunal, by the impugned common order, set aside the select list dated 15-11-1996 prepared by the Government and directed the Government to draw a fresh select-list only to the extent of the number of vacancies notified, i.e. 23. In so far as the challenge made to the conditions contained in the notification relating to LDCs with three years of continuous service and in case of ex-servicemen with 15 years of defence service are eligible to appear for the competitive examination, the Tribunal held that the said conditions are not illegal and arbitrariness. Aggrieved by the common order passed by the Tribunal, the Government of Pondicherry as well as the aggrieved original applicants have filed the above writ petitions.

4. Now, in these writ petitions, the learned counsel appearing for Pondicherry Government submitted that they had relied on the instructions issued by the Department of Personnel and Administrative Reforms in their Official Memorandum dated 8/2/1982 in which certain clarifications were issued as to the procedure to be followed for filling up the vacancies.

5. Learned Government Advocate would further submit that number of vacancies were computed from the date of notification of the recruitment process till the announcement of the results of the examination and the selection panel was drawn up taking up the increase in the number of vacancies.

6. More over, he relied on the decision of the Supreme Court reported in 1996 4 SCC - 319 (PREM SINGH AND OTHERS Vs. HARYANA STATE ELECTRICITY BOARD AND OTHERS), wherein it has been held that the State can deviate from the advertisement and make appointments on posts falling vacant thereafter, in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf. Even when filling up of more posts than advertised is challenged, the Court may not, while exercising its extraordinary jurisdiction, invalidate the excess appointments and may mould the relief in such a manner as to strike a just balance between the interest of the State and the interest of persons seeking public employment and the operative portion of the judgment is as follows:-

" it becomes clear that the selection process by way of requisition and advertisement can be started for clear vacancies and also for anticipated vacancies but not for future vacancies. If the requisition and advertisement are for a certain number of posts only the State cannot make more appointments than the number

of posts advertised, even though it might have prepared a select list of more candidates. The State can deviate from the advertisement and make appointments on posts falling vacant thereafter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf. Even when filling up of more posts than advertised is challenged the Court may not, while exercising its extraordinary jurisdiction, invalidate the excess appointments and may mould the relief in such a manner as to strike a just balance between the interest of the State and the interest of persons seeking public employment. What relief should be granted in such cases would depend upon the facts and circumstances of each case." (emphasis supplied)

7. He further contended that the petitioner is entitled to fill up the vacancy which was subsequently arose from the date of notification due to retirement and such a selection cannot be find fault.

8. Learned counsel further relied upon the decision reported in 1998 (5) SCC - 269 (BENNY T.D. AND OTHERS Vs. REGISTRAR OF COOPERATIVE SOCIETIES AND ANOTHER), wherein the Apex Court has held that

"Though the High Court dismissed the writ petition as well as the writ appeals preferred against the judgment of the learned Single Judge by coming to the conclusion that there has been violation of Sub-Section (4) of Section 80 of the Act and Rule 187 of the Rules, the Registrar had annulled the resolutions of the Bank appointing persons to the post of Clerk on other grounds also and since the legality of the order of the Registrar invalidating the appointment made was challenged in the High Court by filing writ petitions, it is necessary to examine the other grounds also. A perusal of the order of the Registrar and the issues framed for consideration would indicate that the Registrar had also struck down the appointment on two other grounds, namely, the Bank had appointed staff in excess of the approved strength and secondly the advertisement was not in accordance wit Circular Instruction No.18 of 1991 of the Registrar of Co-operative Societies. Coming to the question as to whether appointment had been made in excess of the staff strength approved by the Registrar, it appears that apart from the above statement made by the Registrar in his order no material has been brought on to the record to support the aforesaid conclusion of the Registrar. Merely because in the advertisement

issued by the Bank the probable number of vacancies had been indicated to be lesser than the number of persons finally appointed, one cannot jump to the conclusion that there has been an excess appointment beyond the staff strength approved by the Registrar. It is well known that during the time when an advertisement is issued and by the time when process of selection starts and ultimately appointment orders are issued, on account of several factors the number of posts may be increased, the factors being retirement of persons on attaining super annuation, death of several employees, promotion of the employees to higher posts and for variety of other grounds. In such contingencies, when appointments are made depending upon the vacancies available and in excess of the vacancies advertised, it cannot be said that the appointment has been made in excess of the strength of the cadre approved. There is neither any allegation nor any material to sustain the finding of the Registrar that in fact appointment has been made in excess of the posts approved by the Registrar. The said conclusion, therefore, must be held to be a conclusion based on no evidence and accordingly cannot be sustained. (emphasis supplied).

9. On the other hand, the learned counsel for the respondents relied on two judgments of the Supreme Court reported in 1997 (8) SCC - 488 (SURENDER SINGH AND OTHERS Vs. STATE OF PUNJAB AND ANOTHER), wherein it has been held that

"waiting list cannot be used as a perennial source of recruitment for filling up the vacancies not advertised. The candidates in the waiting list have no vested right to be appointed except to the limited extent that when a candidate selected against the existing vacancy does not join for some reason and the waiting list is still operative. The candidates included in the waiting list cannot claim appointment on the ground that the vacancies were not worked out properly.

10. The learned counsel would further rely upon the decision reported in AIR 1996 SUPREME COURT - 976 (ASHOK KUMAR AND OTHERS Vs. CHAIRMAN, BANKING SERVICE RECRUITMENT BOARD AND OTHERS) wherein, it has been held that "The recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16 (1) of the Constitution. The procedure adopted, therefore, in appointing the persons kept in the waiting list by the respective Boards, though the vacancies had arisen subsequently without being notified for recruitment, is unconstitutional.

However, since the appointments have already been made and none was implemented, we are not inclined to interfere with these matters adversely affecting their appointments.

11. In view of the above, the learned counsel for the respondents vehemently submitted that if a particular number of vacancies have been notified, the selection list drawn to the extent of that vacancy will remain valid till it is exhausted. When the impugned selection list is tainted by illegality, the question of application of O.M. Dated 8/2/1982 does not apply. There is nothing against the directions of the Central Government in the impugned order of the Tribunal.

12. Learned counsel appearing for the respondents would further submit that the decision in BINNI'S CASE 1998 (5) SCC - 269 has no relevance to the case of these respondents, as the same relates to the extent of reservation. In so far as the selection list drawn for 44 vacancies as against 21 vacancies notified, it is palpably illegal and against the law declared by the Supreme Court. By having drawn this selection list double the vacancies notified including vacancies that arose long after the crucial date fixed for eligibility, opportunity to persons like these respondents who become qualified for participating the selection subsequent to 1/7/1994 has been denied. The Honourable Tribunal has rightly held that the selection list so prepared should be set aside and confined to the number of notified vacancies.

13. Considering the facts and circumstances of the case and after careful perusal of the order passed by the Tribunal, we are of the opinion that the Tribunal has rightly rejected the challenge made to the conditions contained in the notification relating to LDCs with three years of continuous service and in case of ex-servicemen with 15 years of defence service are eligible to appear for the competitive examination. We entirely agree with the reasons given by the Tribunal while rejecting the contention of the original applicants that the criteria of eligibility fixed by the Government in case of LDCs and the ex-servicemen are illegal and arbitrary. Therefore, the writ petitions challenging that part of the Tribunal's order is dismissed.

14. Now coming to the order passed by the Tribunal setting aside the select list dated 15-11-1996 and directing the Government to draw a fresh select list for the notified 23 vacancies, we are of the considered view that the order passed by the Tribunal is liable to be quashed. Though the general rule is not to prepare a select list with more number of candidates as against the number of vacancies notified in the advertisement, but in view of the aforesaid judgments of the Supreme Court, in rarest of rare cases when the Government has taken a policy decision to meet the administrative exigencies and prepared a select list to fill up more number of vacancies than the notified one, such a select list cannot be interfered with. In the case on hand, though the notification was issued in the April, 1994, it took more than two and a

half years to complete the entire selection process in August, 1996, and in the interregnum, a large number of vacancies arose due to retirement, etc. and the vacancy as on the date of preparation of the select list increased to 44 and, therefore, the Government prepared the select list for 44 vacancies from among the successful candidates who appeared for the competitive examination. It is further stated by the learned Government Pleader that pursuant to the select list prepared all the 44 candidates have been appointed as UDCs and they are working for more than nine years. He further submitted that except one private candidate and one LDC, all the original applicants concerned were promoted as UDCs and, therefore, they are not aggrieved persons as on date. If at this length of time, the select list is quashed that would cause serious hardship not only to the selected candidates but also the administration of the Government. Therefore, we are of the considered view that the Tribunal completely went wrong in setting aside the select list and directing the preparation of a fresh select list. Accordingly, the order of the Tribunal is quashed. The writ petitions challenging that part of the Tribunal's order are allowed.

15. In the result, Writ Petition Nos.5525 and 6046 of 2000 are allowed and Writ Petition Nos.6503 and 6504 of 2000 are dismissed. No costs.

mvs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Personel Assistant to
The Chief Secretary to Government
Union of India
Chief Secretariat Buildings
Pondicherry.
2. The Deputy Secretary to Government
Department of Personnel and Administrative Reforms
Chief Secretariat Buildings
Pondicherry.

3. The Registrar
Central Administrative Tribunal
High Court Buildings
Chennai 600 104.

1 cc To M/S.Sai, Bharath & Ilan, Advocate, SR.28656.
1 cc To Mr.S.K.Rakhunathan, Advocate, SR.28644
2 cc To M/S.G.M.Mani Associates, Advocate, SR.28721, 28722.
4 cc To The Senior Government Pleader (Pondicherry), SR.28813, 28814,
28818, 28819.

Writ Petition Nos.
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GM(CO)
RVL 04.08.2006



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